



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 18, 1999

Ms. Dorothy Harrington
President and Clerk
H & C Service Corporation
d/b/a Hawthorne Hotel
18 Washington Square West
Salem, Massachusetts 01970

RE: MUR 4803
H & C Service Corp.
d/b/a Hawthorne Hotel

Dear Ms. Harrington:

On October 7, 1999, the Federal Election Commission found that there is reason to believe that H & C Service Corp. d/b/a Hawthorne Hotel violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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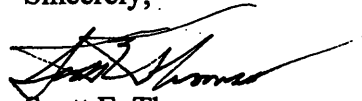
Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Lawrence L. Calvert Jr., the attorney assigned to this matter, at 1-800-424-9530.

Sincerely,



Scott E. Thomas
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: H & C Service Corp. d/b/a Hawthorne Hotel MUR : 4803

I. GENERATION OF MATTER

As it pertains to this respondent, this matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

II. FACTUAL AND LEGAL ANALYSIS

A. Applicable Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits contributions to candidates for Federal office by corporations, labor organizations and national banks. 2 U.S.C. § 441b(a). For purposes of 2 U.S.C. § 441b, a "contribution or expenditure" is defined as including any direct or indirect payment, distribution, loan, advance, deposit or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business). 2 U.S.C. § 441b(b)(2).

The extension of credit by any person to a candidate's authorized political committee is also a contribution, unless the credit is extended in the ordinary course of the person's business. 11 C.F.R. § 100.7(a)(4). The terms of any credit extended must be substantially similar to

extensions of credit to the creditor's nonpolitical debtors that are of similar size and risk of obligation. 11 C.F.R. § 116.3(a). In determining whether credit was extended by a commercial vendor in the ordinary course of the vendor's business, the Commission will examine the vendor's established procedures and past practice in approving credit, the usual and normal practice in the vendor's industry, and whether the vendor received prompt payments in the past from the candidate or the candidate's authorized committee. *See* 11 C.F.R. § 116.3(c).

In addition, a commercial vendor must pursue collection of an outstanding debt from a political committee in a commercially reasonable manner; otherwise, a contribution will result. 11 C.F.R. § 100.7(a)(4). To settle or forgive a debt owed by an ongoing committee without making a contribution, the vendor must file with the Commission its intention to settle or forgive the debt. 11 C.F.R. § 116.8. The Commission will determine if forgiveness or settlement of a debt owed to a commercial vendor is "commercially reasonable" based on factors such as whether the debtor committee has made reasonable efforts to raise the funds to pay back the debt, 11 C.F.R. § 116.4(d)(2), and whether the vendor has made similar efforts to collect the debt as it would a nonpolitical debt, such as by withholding additional goods or services until payment on the debt is made, referring the debt to a debt collection agency, or commencing litigation. *See* 11 C.F.R. § 116.4(d)(3).

2. Relevant Facts

On August 18, 1993, John F. Tierney of Salem, Massachusetts, filed Form 2 with the Commission, declaring himself a candidate for the Democratic nomination for U.S. Representative from the Sixth Congressional District of Massachusetts in the 1994 primary election. The same day, a committee that came to be known as The John Tierney for Congress

Committee (FEC ID #C00283283, hereinafter referred to as the "first committee"), filed a Statement of Organization with the Commission.

On or before September 20, 1994, which was the date of the primary election, the first committee incurred a debt of \$579.66 to H & C Service Corp. of Salem, Massachusetts, d/b/a Hawthorne Hotel, for a "Primary Night Party." Between October 19, 1994 and November 28, 1994, the first committee reported incurring an additional debt to H & C Service Corp. of \$480.65, resulting in an outstanding balance of \$1,060.31. Through its 1998 Year End Report of receipts and disbursements, the first committee continued to report that balance as outstanding.

In the September 20, 1994 primary election, Tierney won the Democratic nomination for U.S. Representative from the Sixth District, receiving 34 percent of the vote to 33 percent and 25 percent for his two closest competitors. On November 8, 1994, Tierney lost the general election, receiving 47 percent of the vote.

On March 29, 1996, Tierney filed a new Form 2, declaring himself once again a candidate for U.S. Representative from the Sixth District. Tierney listed a new committee, "John Tierney for Congress '96" (now known as Tierney for Congress, FEC ID #C00318196, and hereinafter referred to as "the second committee") as his principal campaign committee, and "John Tierney for Congress," the "first committee," as an "other authorized committee." On the same day, the second committee filed a Statement of Organization with the Commission.

As the 1996 election campaign progressed, the second committee employed the services of H & C Service Corp. The second committee reported disbursements to the "Hawthorne

Hotel,” the d/b/a name of H & C Service Corp., totaling \$3,782.39 on November 4 and December 31, 1996.¹

For the 1998 election cycle, Representative Tierney elected to continue the second committee’s operations rather than form yet another committee. The second committee once again employed the services of H & C Service Corp. The second committee reported disbursements to H & C Service Corp. or the “Hawthorne Hotel” totaling \$3,620.43 between March 5, 1997 and July 23, 1998.²

The second committee’s 1999 Mid-Year Report reported disbursements to “Hawthorne Hotel” of \$977.73 between January 1 and January 26, 1999.

The first committee’s debt of more than \$1,000 to H & C Service Corp. has now been outstanding for roughly five years. None of the second committee’s disbursements to H & C Service Corp. have ever been reported as made to pay down any of the first committee’s outstanding debt. Instead, they appear to have been made in connection with the 1996 and 1998 elections.

3. Analysis

The Commission is in possession of a statement in which the first committee asserts that H & C Service Corp. “extended credit [to the first committee] in the ordinary course of [its] business on substantially similar terms to that offered to [its] other customers.” However, the Commission currently possesses no information whatsoever to substantiate this assertion.

¹ Tierney was again nominated, receiving 85 percent of the vote in the September 17, 1996 primary election, and was elected to Congress by a margin of 360 votes out of more than 276,000 cast in the November 5, 1996 general election.

² Representative Tierney was reelected in the November 3, 1998 general election, receiving 54 percent of the vote.

Moreover, while the first committee's statement is relevant to the question of whether the original extensions of credit to the first committee by H & C Service Corp. were contributions, *see* 11 C.F.R. §§ 100.7(a)(4), 116.3(a), it does not address the separate question of whether the extensions of credit became contributions over time because of the vendor's failure to make commercially reasonable attempts to collect the debts. The length of time the first committee's debt to H & C Service Corp. has been outstanding, combined with information in the first committee's statement and the second committee's disclosure reports about the ongoing business relationships between the vendor and the second committee, raises this separate question. *See* 11 C.F.R. § 100.7(a)(4).

Although the first committee has stated that "[b]oth the candidate and the debtor[] [sic] anticipate that all debts of the [old] committee will be paid in full," there is no indication that the vendor has made any attempt to collect the debt owed it. Neither is there any indication that either the first or the second committee has ever made any payment on the debt, or that either committee has ever attempted to raise funds to pay the debt.³ Moreover, the vendor has continued to provide services to the second committee through two election campaigns despite the outstanding debt owed by the first committee. *See* 11 C.F.R. § 116.4(d)(3)(ii). It therefore appears possible that the extensions of credit by H & C Service Corp. ripened into contributions due to a lack of commercially reasonable attempts by the creditor to collect what it was owed by the first committee.

Accordingly, there is reason to believe that H & C Service Corp. d/b/a Hawthorne Hotel

³ In fact, after the first committee raised more than enough money in the last half of 1995 and the first quarter of 1996 to pay the debts, it instead transferred all of the money to the second committee to use in connection with the 1996 campaign.

violated 2 U.S.C. § 441b(a) by making contributions in the form of extensions of credit which it did not attempt to collect in a commercially reasonable manner.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED